IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:	)	Group Art Unit: 3623
Christopher N. Kline	)	Examiner: Neil R. Cardos
Application No.: 10/635,397	)	IBM Corporation
Filed: August 6, 2003	)	Intellectual Property Law
Title: METHOD, APPARATUS AND	)	Department SHCB/040-3
PROGRAM STORAGE DEVICE FOR	)	1701 North Street
SCHEDULING THE PERFORMANCE OF	)	Endicott, NY 13760
MAINTENANCE TASKS TO MAINTAIN A	)	Appeal No.:
SYSTEM ENVIRONMENT	)	Confirmation No.:

BRIEF FOR APPELLANT

ELECTRONICALLY FILED

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

(i) Real party in Interest.

The present application is assigned to International Business Machines Corporation, a corporation organized and existing under the laws of the State of New York and having a place of business at Armonk, New York.

(ii) Related appeals and interferences.

The Appellant's legal representative, or assignee, does not know of any other appeal or interferences, which will affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

(iii) Status of claims.

Claims 1, 5-8, 11-14, 18-21, 24-26 and 28 are pending and on appeal in the application. The application was filed with 28 claims. Claims 2-4, 9-10, 15-17, 22-23 and 27 were previously canceled. Claims 1, 5-8, 11-14, 18-21, 24-26, and 28 were amended. Pursuant to 37 C.F.R. § 1.191(a), Appellant hereby appeals the Examiner's decision finally rejecting claims 1, 5-8, 11-14, 18-21, 24-26 and 28 to the Board of Patent Appeals and Interferences.

(iv) Status of amendments.

A Final Office Action was issued on August 1, 2008, rejecting claims 1, 5-8, 11-14, 18-21, 24-26 and 28 under 35 U.S.C. § 103(a). A Notice of Appeal was filed on October 31, 2008. The fee of $540.00 for filing this appeal brief is to be deducted from deposit account 09-0457 along with any other fees that may be

required, including any present or future extension of time fees, which Appellant hereby requests and authorizes, if necessary.

A clean copy of claims 1, 5-8, 11-14, 18-21, 24-26 and 28 at issue on appeal is attached as the Claims appendix.

(v) Summary of claimed subject matter.

The invention is summarized in the Summary section of the application starting on page 4 and ending on page 5. The invention defined in the claims is a method, system and program storage device for scheduling the performance of maintenance tasks to maintain at least one server in a distributed computing environment. Claim 1, the first independent claim, claims a method for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment; claim 14, the second independent claim, claims a system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment; and claim 28, the third independent claim, claims a program storage medium readable by at least one server in a distributed computing environment, the medium tangibly embodying one or more programs of instructions executable by the server to perform a method for automatically scheduling performance of maintenance tasks to maintain the distributed computing environment. Claim 1

claims a method for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, as shown in reference numeral 500, 600 and 700 of FIGS. 5, 6 and 7, respectively. The method includes the steps of providing a distributed computing environment (as shown by reference numeral 100, 200 and 300 in FIGS. 1-3, respectively, and described on page 7, lines 11-22, page 8, lines 2-19, page 9, lines 3-5, lines 11-17, page 10, lines 2-13) with a plurality of servers, including the at least one server (reference numeral 120 in FIG. 1), monitoring server conditions on the at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the at least one server in the distributed computing environment (as shown in steps 514, 516, 520, 540 and 542 of FIG. 5) and automatically performing the at least one maintenance task in response to the monitoring step, wherein the at least one predetermined criterion includes low disk space on the at least one server and where the at least one maintenance task includes reducing a size of log files stored on the at least one server in the distributed computing environment (as shown in steps 614, 670, 672, 674,and 680 of FIG. 6 and as depicted in steps 714 of FIG.7, and further described on page 13, lines 9-13, lines 19-22, page 14, lines 1-17, page 15, lines 15-17). Claim 14 claims a system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment (reference numeral 100, as shown in FIG. 1). The system includes a maintenance tool (reference numeral 352, shown in FIG. 3) for providing

resources for performing at least one maintenance task on the at least one server in the distributed computing environment and a maintenance scheduling tool (as shown in FIG. 3, reference numeral 350, and described on page 9 of the specification, lines 11-17, page 10, lines 2-13) for monitoring server conditions on the at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the at least one server in the distributed computing environment and for causing the maintenance tool to automatically perform the at least one maintenance task in response to the maintenance scheduling tool detecting the at least one predetermined criterion for performing the at least one maintenance task, where the at least one predetermined criterion includes low disk space on the at least one server and where the at least one maintenance task includes reducing a size of log files stored on the at least one server in the distributed computing environment (as shown in steps 514, 516, 520, 540 and 542 of FIG. 5, as shown in steps 614, 670, 672, 674,and 680 of FIG. 6 and as depicted in steps 714 of FIG.7, and further described on page 7, lines 11-22, page 8, lines 2-19, page 9, lines 11- 13, 16-17, page 10, 2-13, page 11, lines 3-5, page 13, lines 9-13, lines 19-22, page 14, lines 1-17, page 15, lines 15-17). Claim 28 claims a program storage medium readable by a server in a distributed computing environment, the medium tangibly embodying one or more programs of instructions executable by the server to perform a method for automatically scheduling performance of maintenance tasks to maintain the distributed computing environment (reference numeral 388 and

390 in FIG. 3, as described on pages 15, lines 21-22 and page 16, lines 1-6). The method includes monitoring server conditions on the server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the server in the distributed computing environment (as shown in steps 514, 516, 520, 540 and 542 of FIG. 5) and automatically performing the at least one maintenance task in response to the monitoring step, where the at least one predetermined criterion includes low disk space on the server in the distributed computing environment and where the at least one maintenance task includes reducing a size of log files stored on the server in the distributed computing environment (as shown in steps 614, 670, 672, 674,and 680 of FIG. 6 and as depicted in steps 714 of FIG.7, and further described on page 13, lines 9-13, lines 19-22, page 14, lines 1-17, page 15, lines 15-17).

(vi) Grounds of rejection to be reviewed on appeal.

The issue presented on appeal are:

1. Whether claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over "McAfee Total Protection for your PC - McAfee Utilities Version 4.0 User's Guide" (referred to in the Final Office Action as "the McAfee Manual" and referred to herein as "the McAfee Total Protection for your PC Guide") in view of

"Description of the Low Disk Space Notification Tool in Windows XP" (referred to in the Final Office Action as "the Disk Space article" and referred to herein as "the Disk Space Notification Tool in Windows XP), and further in view of "How to Automate the Disk Cleanup Tool in Windows XP" (referred to in the Final Office Action as "the Disk Cleanup article" and referred to herein as "the Disk Cleanup Tool in Windows XP").

2. Whether claims 7 and 20 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP, and further in view of "How to Use the Backup Utility to Back Up Files and Folders in Windows XP Home Edition" (referred to in the Final Office Action as "the Backup Tool article" and referred to herein as "the Backup Utility in Windows XP").

3. Whether claims 11 and 24 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP, and further in view of "Disk Defragmenter Error Codes" (referred to herein as "the Error Codes article").

(vii) Argument.

Rejection of claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28 under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and further in view of the Disk Cleanup Tool in Windows XP

Claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP in paragraph number 5, page 2 of the Final Office Action dated August 1, 2008.

Improper Rejection of Claim 1 under 35 U.S.C. § 103(a):

Turning to Appellant's claim 1, Appellant contends that the McAfee Total Protection for your PC Guide does not teach a method for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, which method comprises providing a distributed computing environment with a plurality of servers including at least one server, monitoring server conditions in a distributed computing environment

to dynamically detect the predetermined criterion comprising low disk space on the server, such that, the predetermined criterion leads to the automatic performance of the maintenance task of reducing the size of log files stored on the server in the distributed computing environment. In particular, the Final Office Action states for the rejection of claim 1 (on page 3 of the Final Office Action) that the McAfee Total Protection for your PC Guide "discloses a method for scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, comprising: providing a distributed computing environment with a plurality of servers including said at least one server (see page iii: "Server-Mode," disclosing using the product on a server)"; monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment (see pages 39-40: "Crash Protector" discloses "continuously monitors your system to detect when an application performs an invalid operation or damages any critical part of your system. When such 'Fault' conditions occur, Crash Protector suspends the application and displays the following dialog box."; and performing said at least one maintenance task in response to said monitoring step (see id.)," and further states that the McAfee Total Protection for your PC Guide "does not explicitly disclose wherein said at least one predetermined criterion comprises low disk space on said at least one server.", page 3 of the Final Office Action, but uses the Disk Space Notification Tool in Windows XP to reject claim 1 stating that the

Disk Space Notification Tool in Windows XP discloses "when a Windows XP-based computer is running low on disk space, your receive a 'Low Disk Space' message that when clicked, 'starts the Disk Cleanup Wizard' (see page 1: Summary)." Turning to the McAfee Total Protection for your PC Guide, Appellant contends that the McAfee Total Protection for your PC Guide states in the "License Agreement" section, paragraph numbered 1 "License Grant" (page preceding page iii) that "You may install one copy of the Software on one computer, workstation, personal digital assistant, pager, "smart phone" or other electronic device for which the Software was designed (each, a "Client Device")." , see lines 3-5, as such, Appellant contends that the McAfee Total Protection for your PC Guide is not intended for a server in a distributed computing environment, as claimed in Appellant's amended claim 1. Further, Appellant points out that the McAfee Total Protection for your PC Guide states in paragraph 1 under section 1a "Use" that "The Software is licensed as a single product: it may not be used on more than one Client Device or by more than one user at a time, except as set forth in this Section 1.", see lines 1-2 of section 1a. Furthermore, Appellant points out that the McAfee Total Protection for your PC Guide states in paragraph 1 under section 1b "Server-Mode" that "You may use the Software on a Client Device as a server ("Server") within a multi-user or networked environment ("Server-Mode") only if such use is permitted in the applicable price list or product packaging for the Software.", see lines 1-3. A complete reading of the McAfee Total Protection for your PC Guide shows that

the only mention of servers is here in the License section, with no discussion of servers provided in the remainder of the sections. This is self-evident in that the Final Office Action has had to resort to referencing this software license mention of "server-mode" instead of a true citation of material disclosure. Moreover, Appellant submits that the title of the article specifically mentions the phrase "Total Protection For Your PC" and that the remainder of the McAfee Total Protection for your PC Guide discusses various McAfee utilities and refers to either a user's "PC" or a "computer" or "system" and does not refer to a server in a distributed computing environment. In particular, in the first paragraph of page 39 of the McAfee Total Protection for your PC Guide discusses using the various McAfee Utilities' Prevent and Protect suite, including the utility "Crash Protector" to protect a "PC" (see line 7) or a "system" (line 9). As such, Appellant submits that the utility "Crash Protector" monitors a system or PC to detect when an application performs an invalid operation or damages any critical part of the system or PC and does not monitor a server in a distributed computing environment, in contrast to Appellant's claim 1. Further, the Final Office Action states that the McAfee Total Protection for your PC Guide "does not explicitly disclose wherein said at least one predetermined criterion comprises low disk space on said at least one server.", page 3 of the Final Office Action and, thus, combines the McAfee Total Protection for your PC Guide with the Disk Space Notification Tool in Windows XP to reject claim 1 stating that the Disk Space Notification Tool in Windows XP discloses "when a Windows XP-based

computer is running low on disk space, your receive a 'Low Disk Space' message that when clicked, 'starts the Disk Cleanup Wizard' (see page 1: Summary)." Appellant submits that the Disk Space Notification Tool in Windows XP discusses receiving a notification "You are running very low on disk space on [drive]. To free space on this drive by deleting old or unnecessary files, click here.", see Summary on page 1. However, Appellant submits that the Disk Space Notification Tool in Windows XP does not discuss monitoring low disk space conditions in at least one server in a distributed computing environment and instead refers to a "Windows XP-based computer", whereas, the present claim 1 requires monitoring server conditions on at least one server in a distributed computing environment for dynamically detecting at least one predetermined criterion, namely, low disk space, for performing at least one maintenance task (namely, reducing a size of log files stored) on the server in the distributed computing environment. Clearly such a proposed combination of the McAfee Total Protection for your PC Guide and the Disk Space Notification Tool in Windows XP citations does not disclose or render obvious the claimed invention in a distributed computing environment. Furthermore, third paragraph, page 4 of the Final Office Action states that the McAfee Total Protection for your PC Guide "also fails to disclose wherein said at least one maintenance task comprises reducing the size of the log files stored on said at least one server in said distributed computing environment.", but the Final Office Action states that the Disk Cleanup Tool in Windows XP discloses "deleting various files and reducing

the size of files", page 4 of the Final Office Action. Further, the Final Office Action states that the "cited references do not explicitly disclose automatically reducing the size of log files in response to an indication of low disk space", and further states at the bottom of page 4 and top of page 5 of the Final Office Action that "the Disk Space Notification Tool in Windows XP discloses automatically generating a notification upon indication of low disk space that allows the user to run the Disk Cleanup tool. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate this user step and automatically run the Disk Cleanup tool." Further, the Final Office Action states at the top of page 5 of the Final Office Action that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate this user step and automatically run the Disk Cleanup Tool. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by automatically running the Disk Cleanup tool rather than waiting for a user input. Furthermore, it is obvious to automate processes. *See in re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)." Appellant contends that the Disk Cleanup Tool in Windows XP states that a user can specify various files that the Disk Cleanup Tool will remove, but Appellant submits that the Disk Cleanup Tool in Windows XP does not disclose automatically performing reducing a size of log files stored on the server in response to monitoring low disk space conditions on at least one server in the distributed computing environment, but rather Appellant contends that a combination of the

McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and further in view of the Disk Cleanup Tool in Windows XP teaches monitoring a computer system (not at least one server in a distributed computing environment) for low disk space and, in addition, teaches deleting or removing files (not reducing the size of log files) based on a user's input or selection (and not automatically). As described in the specification on page 7 (lines 11-22), page 8 (lines 2-19), in a distributed computing environment, certain maintenance procedures must be run regularly to ensure the system is operating properly and that servers in a distributed computing environment must be monitored to prevent crashes and/or to facilitate peak performance. The specification states that such maintenance tasks, however, are not easily performed by built-in utilities and that in fact some important tasks cannot be performed at all by built-in utilities. As such, Appellant contends that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) in a distributed computing environment and, thus, Appellant submits that the rejection of claim 1 on the record is improper and should be reversed. As noted above, the proposed combination results in a Windows XP personal computer system that does not disclose a distributed computing environment. Even when the license agreement wording of the proposed combination is read into the proposed combination disclosures to shoe-horn in the word "server" into the

McAfee Total Protection for your PC Guide, the claimed subject matter of claim 1 is not disclosed or rendered obvious in that the proposed combination makes no mention or suggestion of a distributed computing environment and the claimed subject matter.

Improper Rejection of Claim 1 based on a Misstatement of Fact:

Appellant further contends that the rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious in view of the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP is based on a misstatement of fact. In particular, the Final Office Action states for the rejection of claim 1 (on page 3 of the Final Office Action) that the McAfee Total Protection for your PC Guide "discloses a method for scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, comprising: providing a distributed computing environment with a plurality of servers including said at least one server (see page iii: "Server-Mode," disclosing using the product on a server)"; monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment (see pages 39-40: "Crash Protector" discloses "continuously monitors your system to detect when an application performs an invalid operation

or damages any critical part of your system. When such 'Fault' conditions occur, Crash Protector suspends the application and displays the following dialog box."; and performing said at least one maintenance task in response to said monitoring step (see id.),". Appellant contends that the McAfee Total Protection for your PC Guide does not disclose that the computer or system is a server in a distributed computing environment. There is no disclosure of a distributed computing environment in McAfee Total Protection for your PC Guide, yet the Final Office Action states that such is disclosed. The § 103(a) rejection is based on this misstatement of fact, thus, the rejection is defective in that it is based on a misstatement of fact. A foundation of the rejection of claim 1 is the statement in fact that McAfee discloses a distributed computing environment when in fact this is not true, and with such a faulty foundation based on untruth and misstatement of fact, the rejection is inherently defective, improper and unsustainable. Thus, the rejection of claim 1 is defective and improper and must be withdrawn since it is based on a misstatement of fact.

Improper Rejection of Claim 5 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 5, the Final Office Action states on page 5 that "the cited references do not explicitly disclose running a maintenance routine on demand in response to said monitoring step for improving operation of said at least one server in said distributed environment. Rather, the Disk Space

Notification Tool in Windows XP discloses automatically generating a notification upon indication of low disk space that allows the user to run the Disk Cleanup tool." Further, the Final Office Action states that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate this user step and automatically run the Disk Cleanup Tool. One of ordinary skill in the art would have been motivated to do so for the benefit of efficiencies gained by automatically running the Disk Cleanup tool rather than waiting for a user input. Furthermore, it is obvious to automate processes. *See in re Venner*, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)." Appellant contends that the rejection of claim 5, which depends from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment by running a maintenance routine on demand in response to the monitoring step for improving operation of the at least one server in the distributed computing environment given that none of these three cited references disclose a distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal computer, with no disclosure or

suggestion of a distributed computing environment. Thus, Appellant submits that the rejection of claim 5 on the record is improper and should be reversed.

Improper Rejection of Claim 6 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 6, the Final Office Action states on page 6 that the "McAfee Manual discloses automatically backing up settings for said at least one server to an archive in said distributed computing environment (see page 22: 'McAfee Image,' disclosing wherein the product 'save information that you'll need if your hard disk ever fails, including the boot record, partition tables and FAT information'; See also pages 43-44, disclosing creating automatic backups)." Appellant contends that the rejection of claim 6, which depends from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment by automatically backing up settings for the at least one server to an archive in the distributed computing environment given that none of the three cited references disclose a distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal

computer, with no disclosure or suggestion of a distributed computing environment. Thus, Appellant submits that the rejection of claim 6 on the record is improper and should be reversed.

Improper Rejection of Claim 8 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 8, the Final Office Action states on page 6 that "the McAfee Manual discloses writing log files to said at least one server in said distributed computing environment (see page 40, disclosing a report that 'allows you to view a log containing additional information')." Appellant contends that the rejection of claim 8, which depends from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment by writing log files to the at least one server in the distributed computing environment given that none of these three cited references disclose a distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal computer, with no disclosure or suggestion of a distributed

computing environment. Thus, Appellant submits that the rejection of claim 8 on the record is improper and should be reversed.

Improper Rejection of Claim 12 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 12, the Final Office Action states on page 6 that the "cited references do not explicitly disclose automatically alerting an administrator when a maintenance task performed on said at least one server in said performed excessively." Further, the "Examiner takes Official Notice that it is old and well-known in the computing arts to determine when tasks are performed excessively in order to optimize resource availability. For example, the Windows Disk Defragmenter notifies a user when it is not necessary to perform a defrag because it is a waste of system resources." Again, Appellant contends that the rejection of claim 12, which depends from claim 8, which in turn depends from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment by automatically alerting an administrator when a maintenance task on the at least one server in the distributed computing

environment is performed excessively given that none of these three cited references disclose a distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal computer, with no disclosure or suggestion of a distributed computing environment. Thus, Appellant submits that the rejection of claim 12 on the record is improper and should be reversed.

Improper Rejection of Claim 13 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 13, the Final Office Action states on page 7 that "the McAfee Manual discloses performing said at least one maintenance task on said at least one server in said distributed computing environment at least once within a predetermined period (see page 22: 'McAfee Image," disclosing running the backup utility daily)." Appellant contends that the rejection of claim 13, which depends from claim 12, which depends from claim 8, which in turn depends from independent claim 1, is improper for the same reasons discussed herein above with respect to claim 1, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment by performing the at least one maintenance

task on the at least one server in said distributed computing environment at least once within a predetermined period given that none of these three cited references disclose a distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal computer, with no disclosure or suggestion of a distributed computing environment. Thus, Appellant submits that the rejection of claim 13 on the record is improper and should be reversed.

Improper Rejection of Claims 14, 18-19, 21 and 25-26 under 35 U.S.C. § 103(a):

Turning to the rejection of claims 14, 18-19, 21 and 25-26, the Final Office Action states on page 7 that "claims 14, 18-19, 21 and 25-26 are substantially similar to claims 1, 5-6, 8, and 12-13 and are rejected under similar rationale." Appellant contends that Claim 14 claims a system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment. The system includes a maintenance tool for providing resources for performing at least one maintenance task on the at least one server in the distributed computing environment and a maintenance scheduling tool for monitoring server conditions on the at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the at least one server in the distributed computing

environment and for causing the maintenance tool to automatically perform the at least one maintenance task in response to the maintenance scheduling tool detecting the at least one predetermined criterion for performing the at least one maintenance task, where the at least one predetermined criterion includes low disk space on the at least one server and where the at least one maintenance task includes reducing a size of log files stored on the at least one server in the distributed computing environment. As noted above, the McAfee Total Protection for your PC Guide does not disclose a distributed computing environment, as claimed in claim 14. Accordingly, Appellant contends that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) to provide a system (as claimed in claim 14) for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, where the system includes a maintenance tool for providing resources for performing at least one maintenance task on the at least one server in the distributed computing environment and a maintenance scheduling tool for monitoring server conditions on the at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the at least one server in the distributed computing environment and for causing the maintenance tool to automatically perform the at least one maintenance task in response to the maintenance scheduling tool

detecting the at least one predetermined criterion for performing the at least one maintenance task, where the at least one predetermined criterion includes low disk space on the at least one server and where the at least one maintenance task includes reducing a size of log files stored on the at least one server in the distributed computing environment. As noted already, the proposed combination of these three references results in a Windows XP personal computer, with no disclosure or suggestion of a distributed computing environment. As such, Appellant contends that the rejection of claim 14 is improper and should be reversed. Similarly, the rejection of claims 18-19 and 21, which all depend from claim 14, is improper for the same reasons discussed herein above with respect to claim 14, in that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) to provide a system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, as claimed in claim 14, given that none of these three references disclose a distributed computing environment and instead the proposed combination results in a Windows XP personal computer, with no disclosure or suggestion of a distributed computing environment. Moreover, the rejection of claim 25 (which depends from claim 21, which in turn depends from independent claim 14) and claim 26 (which depends from claim 25, which depends from claim 21, which in turn depends from independent claim 14) is improper for the same

reasons discussed herein above with respect to claim 14 in that none of the references teach a distributed computing environment and that the proposed combination results in a Windows XP based personal computer system, which does not disclose or suggest a distributed computing environment. Thus, Appellant submits that the rejection of claims 18-19, 21, and 25-26 on the record is improper and should be reversed.

Improper Rejection of Claims 14, 18-19, 21, 25-26 based on a Misstatement of Fact

Appellant further contends that the rejection of claim 14 under 35 U.S.C. § 103(a) as being obvious in view of the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP is based on a misstatement of fact. In the Final Office Action (page 7), claim 14 is stated as being substantially similar to claim 1 and is rejected under similar rationale of claim 1. Appellant contends that claim 14 is not disclosed in the McAfee Total Protection for your PC Guide. As such, the proposed combination of McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP results in a Windows XP personal computer system and not a distributed computing environment. In that claim 14 is rejected under the same rationale as claim 1, and as noted above, the rationale of claim 1 is defective and

based on a misstatement of fact, then likewise the rejection of claim 14 is defective for the same reason as claim 1. Further, since claims 18-19 and 21 each depends from independent claim 14, the rejection of claims 18-19 and 21 is defective and improper and must be withdrawn since the rejection of these claims is based on a misstatement of fact. Further, since claims 24 and 25 depend from claim 21, which in turn depends from independent claim 14, the rejection of claims 24 and 25 is defective and improper and must be withdrawn since the rejection of these claims is based on a misstatement of fact. Thus, Appellant submits that the rejection of claims 14, 18-19, 21, and 25-26 on the record is improper and must be withdrawn since it is based on a misstatement of fact.

Improper Rejection of Claim 28 under 35 U.S.C. § 103(a):

Further, with respect to the rejection of claim 28, Appellant submits that claim 28 claims a program storage medium readable by a server in a distributed computing environment, the medium tangibly embodying one or more programs of instructions executable by the server to perform a method for automatically scheduling performance of maintenance tasks to maintain the distributed computing environment. The method includes monitoring server conditions on the server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the server in the distributed computing environment and automatically performing the at least one

maintenance task in response to the monitoring step, where the at least one predetermined criterion includes low disk space on the server in the distributed computing environment and where the at least one maintenance task includes reducing a size of log files stored on the server in the distributed computing environment. As such, Appellant contends that it would not have been obvious to combine the various teachings of the three references (the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP) to provide a program storage medium readable by a server in a distributed computing environment, as claimed in claim 28, where the medium tangibly embodies one or more programs of instructions executable by the server to perform a method for automatically scheduling performance of maintenance tasks to maintain the distributed computing environment given that none of these three cited references disclose a distributed computing environment, and instead the proposed combination teach a Windows XP personal computer system, with no teaching or suggestion of a distributed computing environment. Additionally, as argued above, the proposed combination of the three references does not disclose a distributed computing environment. Thus, Appellant submits that the rejection of claim 28 on the record is improper and should be reversed.

Improper Rejection of Claim 28 based on a Misstatement of Fact

Moreover, Appellant further contends that the rejection of claim 28 under 35 U.S.C. § 103(a) under the same rationale as claim 1, namely, as being obvious in view of the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP is based on a misstatement of fact. As noted above, claim 28 requires a program storage medium readable by a server in a distributed computing environment, the medium tangibly embodying one or more programs of instructions executable by the server to perform a method for automatically scheduling performance of maintenance tasks to maintain the distributed computing environment. There is no disclosure of a distributed computing environment in the McAfee Total Protection for your PC Guide, yet the Final Office Action states that such is disclosed. The § 103(a) rejection is based on this misstatement of fact, thus, the rejection is defective in that it is based on a misstatement of fact. A foundation of the rejection of claim 28 is the statement in fact that McAfee discloses a distributed computing environment when in fact this is not true, and with such a faulty foundation based on untruth and misstatement of fact, the rejection is inherently defective, improper and unsustainable. Thus, the rejection of claim 28 is defective and improper and must be withdrawn since it is based on a misstatement of fact.

Rejection of claims 7 and 20 under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and further in view of the Backup Utility in Windows XP

Claims 7 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP, and further in view of the Backup Utility in Windows XP (in paragraph number 6, on page 7 of the Final Office Action dated August 1, 2008.

Improper Rejection of Claim 7 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 7, the Final Office Action states on page 7 that the "McAfee Manual does not explicitly disclose automatically saving configurations and authorizations for instances of applications running on said at least one server in said distributed computing environment. The Backup Utility in Windows XP discloses backing up system settings, including permissions (see page 2: step 6; see also bullet points at the bottom of page 2)." A thorough reading of these four references in combination and the prosecution of this application clearly shows that this rejection of claim 7 is improper and should be reversed. Appellant contends, as argued above, that the McAfee Total Protection

for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP as combined in the first place rejection of claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28 does not teach or render obvious the invention claimed in claims 1, 5-6, 8, 12-14, 18-19, 21, 25-26 and 28. Further, Appellant contends that the fourth reference of this proposed combination, the Backup Utility in Windows XP, specifically states on page 2 "You can only back up the System State data on a local computer. You cannot back up the System State data on a remote computer." Accordingly, Appellant submits that the Backup Utility in Windows XP does not teach automatically saving configurations and authorizations for instances of applications running on the at least one server in a distributed computing environment. As such, the proposed combined teachings of McAfee User's Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and in further view of the Backup Utility in Windows XP do not render claim 7 (which depends from claim 6, which in turn depends from independent claim 1) obvious in that the combined teachings teach a Windows XP based computer system and do not disclose or suggest providing a distributed computing environment with a plurality of servers including at least one server, monitoring server conditions in a distributed computing environment to dynamically detect the predetermined criterion comprising low disk space on the server, such that, the predetermined criterion leads to the automatic performance of the maintenance task of reducing the size of log files stored on the server in the distributed

computing environment, and where the automatically performing step includes automatically backing up settings for the at least one server to an archive in the distributed computing environment and further includes automatically saving configurations and authorizations for instances of applications running on the at least one server in the distributed computing environment. As such, Appellant submits that the rejection of claim 7 on the record is improper and should be reversed.

Improper Rejection of Claim 20 under 35 U.S.C. § 103(a):

Turning to the rejection of claim 20, the Final Office Action states on page 8 that "Claim 20 is substantially similar to claim 7 and is rejected under similar rationale." Appellant contends that claim 20, which depends from claim 19, which in turn depends from independent claim 14, is not rendered obvious in view of the cited references (as discussed herein above with respect to claim 7) in that the proposed combination of the four references teach a Windows XP based computer system and do not disclose or suggest a system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, where the system includes a maintenance tool for providing resources for performing at least one maintenance task on the at least one server in the distributed computing environment and a maintenance scheduling tool for monitoring server conditions on the at least one server to

dynamically detect at least one predetermined criterion for performing at least one maintenance task on the at least one server in the distributed computing environment and for causing the maintenance tool to automatically perform the at least one maintenance task in response to the maintenance scheduling tool detecting the at least one predetermined criterion for performing the at least one maintenance task, where the at least one predetermined criterion includes low disk space on the at least one server and where the at least one maintenance task includes reducing a size of log files stored on the at least one server in the distributed computing environment. Moreover, the proposed combination of the four references do not teach a system that further comprises a backup routine for backing up system settings to an archive for the at least one server in the distributed computing environment and where the system settings further comprise configurations and authorizations for instances of applications running on the at least one server in the distributed computing environment given that none of these four cited references disclose a distributed computing environment. Further, the proposed combination of the four references does not disclose or suggest a distributed computing environment. Accordingly, Appellant submits that the rejection of claim 20 on the record is improper and should be reversed.

The McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and further in view of the Error Codes article

Claims 11 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP, and further in view of the Error Codes article, in paragraph number 7, page 8 of the Final Office Action dated August 1, 2008.

Improper Rejection of Claim 11 under 35 U.S.C. § 103(a):

Appellant turns to the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP, and further in view of the Error Codes article. The Final Office Action states that the "Error Codes article teaches error codes that appear when the disk defragmenter is unable to perform its task (see page 1)." Appellant submits that the Error Codes article lists error codes that can be found in a Registry location: [HKEY_LOCAL_MACHINE\SOFTWARE\Microsoft\Plus!\System Agent\SAGE\Disk Defragmenter\Result Codes]". As such, Appellant submits that the Error Codes article refers to "local machine" and does not teach a distributed computing environment, as claimed in claim 11. In particular, Claim 11 which depends from claim 8, which in turn depends from independent claim 1, requires providing a distributed computing environment with a plurality of servers

including at least one server, monitoring server conditions in a distributed computing environment to dynamically detect the predetermined criterion comprising low disk space on the server, such that, the predetermined criterion leads to the automatic performance of the maintenance task of reducing the size of log files stored on the server in the distributed computing environment, which Appellant submits is not shown by the proposed combined teaching of McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and further in view of the Error Codes article, given that none of these four cited references disclose a distributed computing environment. Further, the proposed combination of these four references results in a Windows XP personal computer system, with no disclosure or suggestion of a distributed computing environment. As such, Appellant contends that the rejection of claim 11 is improper and the rejection of claim 11 should be reversed.

Improper Rejection of Claim 24 under 35 U.S.C. § 103(a):

Appellant turns to the rejection of claim 24 under 35 U.S.C. § 103(a) as being unpatentable over the McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and further in view of the Error Codes article. Claim 24, which depends from claim 21, which in turn depends from claim 14, requires that the

system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment include a maintenance tool for providing resources for performing at least one maintenance task on the one server in the distributed computing environment and a maintenance scheduling tool for monitoring server conditions on the one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on the one server in the distributed computing environment and for causing the maintenance tool to automatically perform the one maintenance task in response to the maintenance scheduling tool detecting the one predetermined criterion, namely, low disk space on the one server, for performing the one maintenance task, namely, reducing a size of log files stored on the one server in the distributed computing environment, where the one maintenance task further comprises writing the log files to the one server in the distributed computing environment, as claimed in claim 24. Appellant submits that the proposed combined teaching of McAfee Total Protection for your PC Guide in view of the Disk Space Notification Tool in Windows XP and the Disk Cleanup Tool in Windows XP and further in view of the Error Codes article does not render claim 24 obvious given that none of these four cited references disclose a distributed computing environment. Instead the proposed combination of these four references results in a Windows XP personal computer system, with no disclosure or suggestion of a distributed computing environment. Thus, Appellant

contends that the rejection of claim 24 is improper and the rejection of claim 24 should be reversed.

For the reasons set forth above, it is respectfully submitted that the rejections of claims 1, 5-8, 11-14, 18-21, 24-26 and 28 are improper and should be reversed.

(viii) Claims Appendix.

What is claimed is:

1. A method for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, comprising:

providing a distributed computing environment with a plurality of servers, including said at least one server;

monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment; and

automatically performing said at least one maintenance task in response to said monitoring step, wherein said at least one predetermined criterion comprises low disk space on said at least one server, and wherein said at least one maintenance task comprises reducing a size of log files stored on said at least one server in said distributed computing environment.

2. (Canceled)

3. (Canceled)

4. (Canceled)

5. The method of claim 1, wherein said automatically performing said at least one maintenance task step further comprises:

running a maintenance routine on demand in response to said monitoring step for improving operation of said at least one server in said distributed computing environment.

6. The method of claim 1, wherein said automatically performing said at least one maintenance task step further comprises:

automatically backing up settings for said at least one server to an archive in said distributed computing environment.

7. The method of claim 6, wherein said automatically backing up settings for said at least one server to an archive step further comprises:

automatically saving configurations and authorizations for instances of applications running on said at least one server in said distributed computing environment.

8. The method of claim 1, wherein said automatically performing said at least one maintenance task step further comprises:

writing said log files to said at least one server in said distributed computing environment.

9. (Canceled)

10. (Canceled)

11. The method of claim 8, further comprising:

automatically alerting an administrator when a maintenance task performed on said at least one server in said distributed computing environment fails.

12. The method of claim 8, further comprising:

automatically alerting an administrator when a maintenance task on said at least one server in said distributed computing environment is performed excessively.

13. The method of claim 12, wherein said automatically performing said at least one maintenance task comprises performing said at least one maintenance task on said at least one server in said distributed computing environment at least once within a predetermined period.

14. A system for automatically scheduling performance of maintenance tasks to maintain at least one server in a distributed computing environment, comprising:

a maintenance tool for providing resources for performing at least one maintenance task on said at least one server in said distributed computing environment; and

a maintenance scheduling tool for monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment and for causing said maintenance tool to automatically perform said at least one maintenance task in response to said maintenance scheduling tool detecting said at least one predetermined criterion for performing said at least one maintenance task, wherein said at least one predetermined criterion comprises low disk space on said at least one server, and wherein said at least one maintenance task comprises reducing a size of log files stored on said at least one server in said distributed computing environment.

15. (Canceled)

16. (Canceled)

17. (Canceled)

18. The system of claim 14, wherein said at least one maintenance task further comprises:

a maintenance routine for improving operation of said at least one server in said distributed computing environment.

19. The system of claim 14, wherein said at least one maintenance task further

comprises:

a backup routine for backing up system settings to an archive for said at least one server in said distributed computing environment.

20. The system of claim 19, wherein said system settings further comprise configurations and authorizations for instances of applications running on said at least one server in said distributed computing environment.

21. The system of claim 14, wherein said at least one maintenance task further comprises writing said log files to said at least one server in said distributed computing environment.

22. (Canceled)

23. (Canceled)

24. The system of claim 21, wherein said maintenance tool automatically alerts an administrator when a maintenance task on said at least one server in said distributed computing environment performed fails.

25. The system of claim 21, wherein said maintenance tool automatically alerts an

administrator when a maintenance task on said at least one server in said distributed computing environment is performed excessively.

26. The system of claim 25, wherein said predetermined period further comprises said at least one maintenance task on said at least one server in said distributed computing environment being performed at least once within said predetermined period.

27. (Canceled)

28. A program storage medium readable by a server in a distributed computing environment, said medium tangibly embodying one or more programs of instructions executable by said server to perform a method for automatically scheduling performance of maintenance tasks to maintain said distributed computing environment, said method comprising:

monitoring server conditions on said server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said server in said distributed computing environment; and

automatically performing said at least one maintenance task in response to said monitoring step, wherein said at least one predetermined criterion comprises low disk space on said server in said distributed computing environment, and wherein said at least one maintenance task comprises reducing a size of log files stored on said server in said distributed computing environment.

a maintenance scheduling tool for monitoring server conditions on said at least one server to dynamically detect at least one predetermined criterion for performing at least one maintenance task on said at least one server in said distributed computing environment and for causing said maintenance tool to automatically perform said at least one maintenance task in response to said maintenance scheduling tool detecting said at least one predetermined criterion for performing said at least one maintenance task, wherein said at least one predetermined criterion comprises low disk space on said at least one server, and wherein said at least one maintenance task comprises reducing a size of log files stored on said at least one server in said distributed computing environment.

(ix) Evidence appendix.

None

(x) Related proceedings appendix.

None

The Commissioner is hereby authorized to charge $540.00 for payment of the Appeal Brief fee to Deposit Account No. 09-0457. The Commissioner is hereby authorized to charge any additional fees or credit any overpayments regarding this correspondence to Deposit Account No. 09-0457.

Respectfully submitted,

/Silvy Anna Murphy/

Silvy Anna Murphy
Attorney for Appellant
Reg. No. 44,959
P. O. Box 1254
Cary, North Carolina 27512
Phone: 919-859-2360
Fax: 919-233-9242

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